UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

LTD PARTS, INC., A WHOLLY-OWNED SUBSIDIARY OF VISTEON DOMESTIC HOLDINGS, LLC[1]

and **Case 26-RD-1051**

LISA ANN DODSON
Petitioner

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)[2]
Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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1 The Employer's name was amended at hearing.

2 The Union's name was amended at hearing.

3 The Employer was not present at the hearing, but executed a stipulation regarding certain issues.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here. [4]

3. The labor organization involved in this proceeding claims to represent certain employees of the Employer.

4. As explained below, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election to decertify the Union as the bargaining representative for a unit of production employees at the Employer's Sparta, Tennessee facility. The sole issue presented here is the Union's contention that the petition should be dismissed under the recognition bar doctrine because a reasonable period of time has not elapsed since the Employer voluntarily recognized the Union. Based on the evidence adduced at hearing and applicable Board law, I find that the Employer and Union have not had a reasonable time to negotiate a collective-bargaining agreement and I am dismissing the petition.

[4] The Employer, LTC Parts, Inc. a wholly-owned subsidiary of Visteon Domestic Holdings, LLC, is a Tennessee corporation engaged in the manufacture of auto parts at its facility located in Sparta, Tennessee. During the last 12 months, a representative time period, the Employer sold and shipped goods and services valued in excess of $50,000 directly to customers outside the State of Tennessee and purchased goods and services valued in excess of $50,000 which were shipped to the Employer's Tennessee location directly from vendors located outside the State of Tennessee.

Facts

The Employer is an automobile parts manufacturer located in Sparta, Tennessee. It employs about 115 production employees including about 28 who are temporarily laid off.

In about January 2001, Visteon Domestic Holdings, LLC purchased LTD Parts, Inc. located in Sparta, Tennessee. Around that same time, the Union began an organizing drive and obtained membership cards signed by a majority of the employees at the Sparta plant. In accordance with the provisions of a neutrality agreement between Visteon and the Union, the Union submitted the cards to an independent arbitrator for certification. On April 2, 2001[5], the arbitrator certified the Union as the bargaining representative of the Employer's production employees, including shipping and receiving and warehouse employees. On April 11, the Employer forwarded to the Union a copy of a notice to employees it had signed which confirmed its recognition of the Union as the collective-bargaining representative of its production employees.

On April 9, the Union designated Roy Thomas as the servicing representative for the bargaining unit at LTD. However, for much of April, Thomas was occupied with negotiations with another employer.

About May 8, Thomas initiated contact with the Employer by telephoning Visteon HR Director Vern Horstman, whom Thomas believed would be negotiating the contract at the Sparta plant. Thomas had several conversations with Horstman but was unable to schedule bargaining dates. About May 17, Thomas and International Representative

[5] All dates hereafter are in 2001.

Jamie Brimer held a meeting with the card signers who elected two employees to serve as the temporary bargaining committee for contract negotiations.

On June 4, Horstman informed Thomas that he would not be the Employer's spokesman during negotiations and stated that, although he was not certain, he believed Ari Papadakos would be the Employer's representative. Thomas then contacted Terry Howard, a manager at the Sparta plant, and requested the name of the person who would be negotiating on behalf of the Employer. Shortly thereafter, the Employer provided Thomas with the name and contact information for Ari Papadakos, who is based in Dearborn, Michigan.

On June 13, Thomas sent a letter to Papadakos identifying himself as the Union representative for the Sparta plant and soliciting dates for bargaining. Thereafter, Papadakos telephoned Thomas and explained that he had just been assigned the location and was not familiar with the plant and it would take some time to familiarize himself with operations and management of the plant. The Employer and Union exchanged 22 telephone calls, on 12 different days in June.

In July, the parties discussed compensation for bargaining committee members and the Employer agreed to compensate them for time spent at the bargaining table. The Employer and Union exchanged 12 telephone calls, on 6 different days in July.

On August 1, Papadakos flew to Nashville and met with Thomas for about two hours. They discussed ground rules for negotiations, including that they would discuss non-economic matters first, and agreed to a blackout of information to the local membership until ratification day. Thomas asked Papadakos to establish bargaining

dates as soon as possible so the Union could present its non-economic proposals. About August 24, Thomas met with the local bargaining committee and formulated the Union's non-economic bargaining proposals.

On a date not clearly established in the record, the parties scheduled a bargaining session for August 28. However, Papadakos later cancelled the August 28 meeting. Thomas informed Papadakos that it was urgent that they get the negotiations underway. The bargaining session was rescheduled for September 13. During August, the Employer and the Union exchanged 8 telephone calls on 4 different days.

Because of the terrorist attack on the World Trade Center and Pentagon on September 11, Papadakos was unable to fly from Michigan to Tennessee and the meeting scheduled for September 13 was cancelled. About September 21, Thomas learned from another Union official that Visteon Coordinator Ron Sullivan, a direct superior of Papadakos, had apologized for the cancelled meetings, explained that cancellations were a result of the Employer's restructuring, and provided assurances that the Employer would not cancel future negotiating sessions. The Union and the Employer exchanged 11 telephone calls on 9 different days in September.

Negotiations did occur on October 10, 11 and 12, in Cookeville, Tennessee from 8 a.m. to about 5 or 6 p.m. each day without lunch breaks. Thomas presented the Union's non-economic proposals and the parties reached agreement regarding most non-economic issues, including management's rights, successor clause, grievance procedure, arbitration, report and call-in, job posting, shift preference, health and safety, seniority, overtime, and dues checkoff. According to Thomas, these sessions resolved

90 to 95 percent of the non-economic issues. The parties tentatively agreed to meet on October 22 to finish the non-economic issues and discuss economic issues.

Approximately October 17, Thomas faxed the Union's economic proposals to Papadakos. At some point prior to the tentatively scheduled October 22 date, Papadakos informed the Union that he could not make that date. Thomas expressed dissatisfaction and Papadakos agreed to meet on October 29 and said that the meeting would last until the parties reached a final agreement.

Analysis

As a means of achieving industrial peace, the Board seeks to balance the competing goals of effectuating employee free choice while promoting voluntary recognition and protecting the stability of collective-bargaining relationships. MGM Grand Hotel, 329 NLRB 464 (1999), citing Ford Center for the Performing Arts, 328 NLRB 1 (1999) and Smith's Food & Drug Centers, 320 NLRB 844, 846 (1996). The Board encourages voluntary recognition and bargaining by permitting the parties "a reasonable time to bargain and to execute the contracts resulting from such bargaining." Keller Plastics Eastern, Inc., 157 NLRB 583, 587 (1966). Thus, when an employer voluntarily recognizes a union, based on a demonstration of majority support, the parties are entitled to rely on "the continuing representative status of the lawfully recognized union for a reasonable period of time even though, in fact, the union may have lost its majority in the unit." Blue Valley Machine & Mfg. Co., 180 NLRB 298, 304 (1969). The presumption of continuing majority is a policy judgment which seeks to ensure that the bargaining representative chosen by a majority of employees has the

opportunity to engage in bargaining to obtain a contract on the employees' behalf without interruption. MGM Grand Hotel, supra at 466.

What constitutes a "reasonable time" is not measured by the number of days or months spent in bargaining, but by what transpired and what was accomplished in the bargaining sessions. Id. In determining whether a reasonable time has passed, the Board examines "the factual circumstances unique to the parties' recognition and bargaining to determine whether, under the circumstances, the parties have had sufficient time to reach agreement." Id. In so doing, the Board looks to the degree of progress made in negotiations, whether or not the parties were at an impasse, and whether the parties were negotiating for an initial contract. Id.

Particularly where, as here, the parties were negotiating for an initial contract, the Board recognizes the attendant problems of establishing initial procedures, rights, wage scales, and benefits in determining whether a reasonable time has elapsed. MGM Grand Hotel, supra at 466; Ford Center for the Performing Arts, supra at 1. The Board also recognizes that establishing such initial procedures and contract terms may take time that is not required in those instances where "a bargaining relationship has been established over a period of years and one or more contracts have been previously executed." MGM Grand Hotel, 329 NLRB at 466, citing N.J. MacDonald & Sons, 155 NLRB 67, 71-72 (1965).

The parties here experienced the problems attendant to initial contract negotiations. They had no established lines of communication from which to launch their bargaining relationship and it took some time to clarify who the participants would

be. This was exacerbated by Visteon's recent acquisition of the Employer and the changes and uncertainty resulting from the restructuring. Once communication lines were established, the parties faced the more traditional problems associated with negotiating an initial agreement. After Papadakos was designated as the Employer's representative, he required some reasonable time to familiarize himself with the Sparta operations.

The parties then lost an appreciable amount of time because of the September 11 terrorist attacks that prevented Papadakos from attending the September 13 negotiating session and required rescheduling of that session. This effectively reduced the bargaining period from approximately six months to five.

Once the parties began meeting, significant progress was made. In the three-day bargaining session held in Cookeville, they resolved 90 to 95 percent of all non-economic issues. If not for the events of September 11, the parties may have resolved these issues a month earlier. Following the productive session in Cookeville, the parties planned to meet in a timely fashion and resolve economic issues.

Notwithstanding the above factors that suggest a reasonable period of time has not elapsed, other factors point to a different conclusion. Thus, initially the negotiations here were not active. Cf. Ford Center for the Performing Arts, supra at 2 (Board found that 9 months was not a reasonable time where the parties worked diligently to reach an agreement). Furthermore, the record here does not reflect that the negotiations involved an unusually large number of employees or classifications. Cf. MGM Grand

Hotel, supra at 466 (Board found 11 months was not a reasonable time where the unit had over 3,000 employees in 53 classifications).

Conclusion

In examining the factual circumstances unique to the parties' recognition and bargaining to determine whether, under the circumstances, the parties have had sufficient time to reach agreement, I conclude that their initial lack of progress was partly attributable to their newly formed bargaining relationship and the recent acquisition of LTD by Visteon. The parties were also hampered by the unique circumstances surrounding the events of September 11. Once they met, they made significant progress in reaching an agreement. In these circumstances, I conclude that denying protection of the voluntary recognition bar in this case would frustrate and destabilize the collective-bargaining process at a time when bargaining efforts were on the verge of bearing fruit. Ford Center for the Performing Arts, 328 NLRB at 1. In balancing the competing goals of effectuating free choice while promoting voluntary recognition and protecting the stability of collective-bargaining relationships, the purposes of the Act are best served by a finding that a reasonable time had not elapsed when the petition was filed. In reaching this conclusion, I note that the circumstances here are unique. Moreover, my conclusion does not preclude the filing of a new petition at a later date.

ORDER

The petition filed in the above-captioned case is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received [6] by the Board in Washington by **November 20, 2001.**

Dated, the 6th day of November 2001 at Memphis, Tennessee.

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

CLASSIFICATION INDEX

347-2067-6700

[6] Your attention is directed to the attached press release regarding suspension of mail to the NLRB and allowing certain documents to be filed by facsimile.

FOR IMMEDIATE RELEASE R-2440
MONDAY, OCTOBER 29, 2001 202/273-1991
www.nlrb.gov

WITH U.S. MAIL DELIVERY SUSPENDED, NLRB PERMITS CERTAIN FILING BY FAX

The U.S. Postal Service has suspended mail delivery at National Labor Relations Board headquarters in Washington, DC based on recent events affecting metropolitan postal facilities. It is not clear at this time when mail deliveries will resume.

To address this disruption, the Board, effective immediately, has decided to temporarily permit, without advance permission, the filing of Requests for Review of Regional Director Decisions to the Board in Washington, DC by facsimile transmission. The Board's facsimile number is **(202) 273-4270**. The provision of Section 102.114(f) of the Board's Rules and Regulations, noting that the "failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was offline or busy or unavailable for any other reason," remains effective. Section 102.114(f), (g), and (h) will continue to provide guidance for the filing of all other documents by facsimile transmission.

Furthermore, the Board will continue to apply its "postmark" rule, Section 102.111(b), to filings that are mailed or provided to delivery services. Under the rule, documents that are postmarked or provided to a delivery service the day before the due date or earlier will be accepted regardless of the date the document is received by the Board. However, the Board does not intend to postpone elections because a request for review has not been delivered by the Postal Service. Accordingly, for the time being, use of facsimile or a delivery service is strongly encouraged for the filing of Requests for Review.

Questions regarding this matter should be directed to Executive Secretary John J. Toner (202) 273-1940.

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